

INITIAL STATEMENT OF REASONS

TITLE 14. NATURAL RESOURCES DIVISION 6. RESOURCES AGENCY CHAPTER 2. OPEN SPACE SUBVENTION ACT

The Secretary of the Resources Agency has authority to promulgate rules and regulations for the Open Space Subvention Act as provided in Government Code section 65570. The Secretary, as provided by Government Code Section 12854, has delegated to the Department of Conservation (Department) the primary responsibility for the administration and enforcement of the Open Space Subvention Act and the California Land Conservation (Williamson) Act and the regulations promulgated thereunder.

The Open Space Subvention Act has been in effect since 1971 for the purpose of partially reimbursing local governments for administrative costs and foregone tax revenue experienced by counties and cities participating in the Williamson Act program. The subvention payments to local governments are dispensed from the General Fund of the State of California. Participating counties and cities annually submit a subvention application documenting for subvention payment the acreage enrolled in Williamson Act contracts. The Department is responsible for the processing of annual subvention applications submitted by the 47 counties and 13 cities participating in the Williamson Act program. After verifying the accuracy of the reported acreage data, the Department certifies the subvention entitlement report to the Controller's Office. The Controller's Office disperses the subvention payments to eligible counties and cities.

The Department of Conservation is also responsible for the preparation of a biennial Williamson Act Status Report to the California Legislature. The Legislature requires that the Report contain information on the number of acres of land under contract, the category of land, and the number of acres of land removed from contract through cancellation, eminent domain, annexation, and nonrenewable. The data to prepare the Status Report is compiled from data supplied in the annual subvention applications submitted by the counties and cities participating in the Williamson Act program.

The Department is undertaking this rulemaking to update and clarify existing law, and amend requirements for filing of subvention application reports. This will ensure that adequate documentation is submitted to enable the Department to certify subvention payments. It will also aid the participating local governments in accurate application preparation. An explanation of the modifications being proposed through this rulemaking follows.

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Foreword is amended to include the Director of the Department of Conservation along with the Secretary for Resources as a responsible party for promulgating regulations and to indicate that the party to contact for information is the Director of the Department of Conservation. This is necessary because the Director, pursuant to delegation by the Secretary of the Resources Agency, is now primarily responsible for administration and enforcement of the Williamson Act and the Open Space Subvention Act.

Section 14100 is amended to clarify the authority for specific section references to the Government Code.

Section 14101 is amended to clarify and update specific section references to the Government Code, Health and Safety Code, and Revenue and Taxation Code provisions relating to the Open Space Subvention Act, and the California Land Conservation (Williamson) Act.

Section 14102(h) is added to refer the definition of prime agricultural land to an existing code section for clarity.

Section 14102(i) is added to clarify that "Director" refers to the Director of the Department of Conservation.

Section 14110.1 is added to clarify the procedure for counties to apply for subvention payments for contracted land under a city's jurisdiction. This is necessary to ensure that a county is properly authorized to claim a city's subvention.

Section 14111(b) is amended to delete a reference to a repealed Government Code Section and obsolete application form and to add language referencing the proper current code relating to state payments. Amendments also clarify how nonprime lands are identified for subvention purposes under criteria required under section 14112(c). This is necessary to ensure that local participating governments have current and accurate references in order to apply for state payments.

Section 14111(c) is amended to include map preparation standards to ensure that the map to be submitted with the subvention application report by a local government is prepared according to uniform, technically acceptable standards. The reference to a map sample is unnecessary and is deleted because the Secretary no longer provides map samples.

Section 14111(c)(I)(A)(B)(C) and (D) is added to identify the information to be included on the map which must be submitted annually along with the subvention report by counties and cities. This is necessary to provide guidance to local governments in producing the map to ensure that boundaries of agricultural preserves and the location and land category of all enforceably restricted lands will be clearly delineated on the map.

Section 14111 (c)(2)(A)(B)(C) is added to provide production standards for annual map preparation. The production standards define boundary and parcel features. This is necessary to provide guidance to local governments for map production which meets current map requirements.

Section 14111 (c)(3)(A)(B)(C) is added to specify the production standards required for counties using a computer-based mapping system for the required annual map. This is necessary to ensure maps meet current GIS mapping standards.

Section 14111 (c)(4)(A)(B)(C)(D) is added to clarify the production standards required for local governments which do not produce a map using a computer-based mapping system. This is necessary to provide clarity and consistency for mapping standards and map production.

Section 14111(c)(5) is added to provide mapping technical assistance and consultation by the Department of Conservation to local governments upon request. This is necessary to aid and enable local governments to meet the required mapping standards.

Section 14111(c)(6)(A)(B) is added to provide a method to incorporate a local governments map into the Department of Conservation's GIS mapping system. This is necessary to aid local governments and the Department to create a standardized map.

Section 14111 (e) adds language to ensure that the Secretary is provided with the current rules, compatible use definitions, and minimum parcel size requirements enacted by a local government administering agricultural preserves. Obtaining current rules, definitions and requirements is necessary to maintain up-to-date information in the Department of Conservation's county and city Williamson Act files, and to ensure that enforceably restricted lands are being administered consistent with Williamson Act provisions.

Section 14111(f) adds language to clarify the information to be provided on the open space element, which includes a map indicating the location of open space land, pursuant to current Government Code provisions.

Section 14111(g) adds language to clarify the information to be provided on the subvention application regarding acreage terminated from contract, and whether the method of termination is through nonrenewal, acquisition, cancellation, or public acquisition. If removed through cancellation or public acquisition, a statement of the anticipated subsequent use of the land is required. This information is necessary to enable the Department to track the purposes for which termination of Williamson Act contracts are sought, and to identify trends which affect the continuation of Williamson Act contracts.

Section 14111(h) adds language to clarify the information to be provided detailing acreage under Williamson Act contracts for which the nonrenewal process has been initiated. This data is necessary to enable the Department to track the amount of land

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undergoing nonrenewal and its location. This is also important in certifying subvention claims since such lands do not qualify for payment. This information is required to be included in the Biennial Status Report for the Williamson Act Program.

Section 14111(i) adds language to provide that a list of all continuing enforceably restricted lands being annexed by a city be included in the application report, along with the name and address of the annexing city. This is necessary to ensure consistent city administration of restricted lands upon annexation from a county's jurisdiction.

Section 14112(a) is amended to add a current code reference and provide consistency in referencing applicable code provisions.

Section 14112(c) is amended to delete a reference to a repealed section and to add the correct Government Code section reference.

Section 14112(d) is amended clarify the length of time land must meet current Government Code requirements for defining prime agricultural land. This change is necessary to clarify the definition of prime agricultural land in order for the state to avoid paying subvention entitlements on lands which no longer qualify as prime land as a result of changes in land use or water availability.

Section 14113 deletes the reference to a repealed section of the Government Code and an obsolete application form. These deletions will make the language consistent with Government Code Section 16140-16154 provisions for open space subventions.

Section 14113(a) is unnecessary and is deleted because it refers to a category for subvention payments which was removed by statutes of 1993.

Section 14113(b) is changed to 14113(a) and is amended to add language clarifying that the parcel size requirements apply to computations for subvention purposes and do not affect minimum legal size requirements of specified code sections. This is necessary to provide clarity to local participating jurisdictions preparing annual application reports.

Section 14113(c) is changed to 14113(b) and is amended to clarify the type of land that is not eligible for subvention payment.

Section 14113(b)(1) is added to clarify that contracted acreage for residential use is not eligible for subvention payment. This is consistent with provisions of the Revenue and Taxation Code.

Section 14113(b)(2) is added to clarify that acreage undergoing nonrenewal is not eligible for subvention payment, and to be consistent with provisions of the Revenue and Taxation Code.

Section 14113(b)(3) is added to clarify that open space land restricted under the Open Space Easement Act of 1974, is not eligible for subvention payment.

Section 14113(b)(4) is added to clarify that substandard parcels of open space land are not eligible for subvention payment. This language is necessary to aid local governments in properly identifying land eligible for subvention payments and to ensure that the State's taxpayers do not subsidize enforceably restricted parcels that are too small to sustain viable agricultural operations or open space use.

Section 14113(b)(5) is added to clarify that land valued lower under Revenue and Taxation Code 110.1 than under 423, 423.3 or 423.5 is not eligible for subvention payments. Since land valued lower under Revenue and Taxation Code 110.1 fluctuates from year to year, this clarification will aid local governments in accurately identifying lands not eligible for payment.

Section 14113(d) is unnecessary and is deleted because it references assessment requirements of a code which was repealed in 1977.

Section 14114 is amended to add language add the Department of Conservation and the State Board of Equalization to the list of agencies to which records must be provided. These changes are necessary to enable agencies responsible for state administration of the Open Space Subvention Act to have access to local Williamson Act program records. Also, language is added to ensure that confidential documents shall not become public records upon transfer to a state agency. The record retention period regarding assessment of contracted land is extended from five years to six years. Language is added to specify the length of time other records for contract administration and enforcement shall be retained. This is necessary to ensure proper documentation will be available upon request for state audits

Section 14116 is amended to provide that if the Secretary determines that lands do not qualify for subvention payment, a city or county has 60 calendar days to protest the determination. This change is necessary to provide clarity to both the Secretary and local government that after the specified time allowed for protest, and upon such protest, the Secretary shall schedule a hearing on the issue.

Section 14117(a) is added to identify that annual subvention entitlements may be paid on a monthly basis, and the month which such payments may begin each year. This is necessary to provide subvention payments to participating local governments as soon as subvention applications are certified. This will enable those counties and cities providing complete and accurate applications to receive state subventions expeditiously.

Section 14117(b) is added to clarify that the Secretary may certify payment on the basis of the month an application report is accepted as complete and accurate. This is necessary to provide subvention payments to participating local governments as soon as subvention applications are certified.

Section 14117(c) is added to define the amount of total payment reduction that can be imposed for late submittal of application reports. Timeframes for notifying local

governments of payment reduction and appeals of such action by local governments are also identified. This addition is necessary to ensure that application reports are submitted by the date required by statute, and to assess a late submission penalty when that statutory date is not met. Since the required biennial status report is based on data contained in reports, it is important to receive complete and accurate reports on a timely basis.

Section 14117(d) is added to clarify the date after which total payment reduction for late application submittal shall not be subject to appeal, certified for payment, or payments delayed. This is necessary to address the problem of application reports which are not submitted within the statutory timeframes required.

Section 14118(a) is added to define the procedure that may be undertaken by the Secretary to recover subvention overpayments. It also requires that a governing body shall provide documentation necessary to support entitlement claims due to corrections or improvements to local records and record-keeping systems. This change is necessary to provide the Secretary with the documentation needed to ensure that acreage data submitted for subvention payment is accurate.

Section 14118(b) is added to provide that the Secretary may deduct unpaid, or untransmitted, cancellation fees from subvention payments. It defines that an interest penalty may be assessed and the basis for calculating the penalty. This is necessary to ensure that cancellation fees are remitted to the State Controller's Office within the time specified by statute.

Section 14119(a) is added to provide a process for giving notice to a city or county upon a determination that it is ineligible to receive subvention payments because of violation of enforceable restrictions. It establishes a 60 calendar day timeframe for a noticed jurisdiction to contest the determination that violation has occurred. This change is necessary to provide clarity on the proper noticing and procedure for responding to notices by local jurisdictions. The Director has been delegated authority by the Secretary for the primary responsibility for administration and enforcement of open space subventions.

Section 14119 (b) is added to establish that upon determination of a county or city's ineligibility for state payment, the amount of subvention ineligibility may be set as being equal to what a contract cancellation penalty would have been. This authority to impose a penalty is consistent with the authority provided the Secretary to enforce any enforceable restriction and is necessary to ensure that the \$35 million allocated annually for state subvention payments is protected from improper administration of provisions on enforceably restricted lands. This change is necessary to provide a basis for calculating penalties.

Section 14119 (c) is added to provide that the authorization to the Secretary or Director to enforce the state law provisions is not limited by provisions within the section. It also clarifies that any action resulting from enforcement provided by this new section shall

not terminate an enforceable restriction in question. This change is necessary to provide a basis for calculating penalties.

Section 14125 is amended to ensure that approval by a governing body of a waiver of a contract cancellation fee or an open space easement abandonment fee shall meet the requirements of Government Code Sections 51061 or 51283. This change is necessary to provide consistency with current law.

Section 14125 (b) is amended to add the requirement that the assessor's parcel number shall be included on the map which must be submitted to support fee waiver. This is necessary because the assessor's parcel number, which identifies the location of land under a Williamson Act contract or within an agricultural preserve, is used to maintain current and accurate records.

Section 14125 (e) is amended to require information on the amount of an open space easement abandonment fee, and the basis for calculating both cancellation and abandonment fees, and determining land valuation. This will provide for consistency between the process for abandonment and cancellation fees, and is necessary to ensure that the penalty for terminating a contract or easement prior to full term, is accurately calculated and fully documented.

Section 14125 (f) is amended to require information on an open space easement abandonment, as well as a contract cancellation, in the narrative explaining the basis for such actions. Language was added to provide information on the findings required to determine the waiver of a cancellation or abandonment fee. This is necessary to ensure that adequate documentation regarding a local government's justification for fee waiver is provided to the Secretary, who has the final authority to approve a fee waiver.